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U.S. BANKRUPTCY CT.
S.D. DIST. OF CALIF.

Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT

SOUTHER DISTRICT OF CALIFORNIA

SAN DIEGO DIVISION

09-5397

THE VECHERY FAMILY TRUST DTD)
10/9/84; KEY BRANDS)
INTERNATIONAL, LTD.; and A W)
FINANCIAL GROUP, LLC.,)

CASE NO. 09-90171

ANSWER TO COMPLAINT TO DETERMINE
DISCHARGEABILITY OF DEBT

Plaintiffs,)

v.)

WALID E. JAMIL and AWATIF S.)
JAMIL,)

Defendants.)

COMES NOW Defendants, WALID E. JAMIL and AWATIF S. JAMIL,
and answers Plaintiff's complaint to determine dischargeability
of debt as follows:

I

ANSWER

A. The Parties

1. These answering Defendants admits the allegations in
paragraphs 1 through 4, inclusive, of Plaintiff's complaint.

1 2. These answering Defendants deny the allegations
2 contained in paragraph 5 of Plaintiff's complaint and
3 affirmatively allege that the Debtor Walid E. Jamil was a
4 shareholder of the corporation known as Jamil Holdings, Inc., dba
5 Universal Grocers and Abarrotera Mundial. A Mexico Corporation.
6 The debtor, Awatif S. Jamil was not a shareholder of either of
7 the corporations in which her husband was a shareholder. Neither
8 Defendant, Walid E. Jamil nor Awatif S. Jamil, were shareholders
9 of the corporation known as Tri-Mex Distributors, Inc., a
10 California Corporation.

11
12 3. These answering Defendants deny the allegations
13 contained in paragraph 6 of Plaintiffs complaint.

14 4. These answering Defendants admit the allegations
15 contained in paragraph 7 of Plaintiffs complaint.

16 B. Jurisdiction and Venue

17 5. These answering Defendants admit the allegations
18 contained in paragraphs 8 through 10 of Plaintiffs complaint.

19 C. Factual Background

20 6. These answering Defendants deny the allegations
21 contained in paragraphs 24, inclusive, of Plaintiffs complaint.
22 These answering Defendants admit that substantial documentation
23 was provided to Plaintiffs at Plaintiffs request to perform their
24 due diligence with regard to investing into the business
25 enterprise in Mexico. These answering Defendants further allege
26 that all monies provided by Plaintiffs was in the form of
27 investments to the Mexico business enterprise and not loans as
28

1 alleged by Plaintiffs, and that therefore such sums are not due
2 and owing as the investment was lost in the business venture.

3 D. Count 1 - Exception to Discharge Under 11 U.S.C.

4 523(a)(2)(A)

5 7. In answer to paragraph 25 of Plaintiff's complaint,
6 these answering Defendants incorporate their answers to the
7 paragraphs incorporated therein as if set forth in full herein.

8 8. These answering Defendants admit the allegations
9 contained in paragraph 26 of Plaintiffs complaint.

10 9. These answering Defendants deny each and every
11 allegation contained in paragraphs 27 through 29 inclusive, of
12 Plaintiff's complaint. These answering Defendants affirmatively
13 aver that the funds provided were investment funds into a
14 business venture which were provided based upon the due diligence
15 of the Plaintiffs.

16 E. Count II - Exception to Discharge Under 11 U.S.C.

17 523(a)(2)(B)

18 10. In answer to paragraph 30 of Plaintiff's complaint,
19 these answering Defendants incorporate their answers to the
20 paragraphs incorporated therein as if set forth at full herein.

21 11. These answering Defendants admit the allegations
22 contained in paragraph 31 of Plaintiffs complaint.

23 12. These answering Defendants deny each and every
24 allegation contained in paragraphs 32 through 36 inclusive, of
25 Plaintiff's complaint. These answering Defendants affirmatively
26 aver that the funds provided were investment funds into a
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1 business venture which were provided based upon the due diligence
2 of the Plaintiffs.

3 F. Count III - Exception to Discharge Under 11 U.S.C. 523(a)(4)

4 13. In answer to paragraph 37 of Plaintiff's complaint,
5 this answering Defendant incorporates it's answers to the
6 paragraphs incorporated therein as if set forth at full herein.

7 14. These answering Defendants admit the allegations
8 contained in paragraph 38 of Plaintiffs complaint.

9 15. These answering Defendants deny each and every
10 allegation contained in paragraphs 2739 and 40 of Plaintiff's
11 complaint. These answering Defendants affirmatively aver that
12 the funds provided were investment funds into a business venture
13 which were provided based upon the due diligence of the
14 Plaintiffs.

15 G. Count IV - Exception to Discharge Under 11 U.S.C. 523(a)(6)

16 16. In answer to paragraph of Plaintiff's complaint, this
17 answering Defendant incorporates it's answers to the paragraphs
18 incorporated therein as if set forth at full herein. As to the
19 balance of the paragraph related to Section 523(a)(6) of the
20 bankruptcy Code, these answering Defendants admit the allegations
21 contained therein.

22 17. These answering Defendants deny the allegations
23 contained in paragraphs 42 and 43 of Plaintiffs complaint.

24 II

25 AFFIRMATIVE DEFENSE

1 AS A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
2 COMPLAINT AND EACH CAUSE OF ACTION THEREIN, DEFENDANTS ALLEGE AS
3 FOLLOWS:

4 Plaintiffs Complaint, and each and every purported cause of
5 action alleged therein, fails to state facts sufficient to
6 constitute a cause of action against these answering Defendants.

7 AS A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
8 COMPLAINT AND EACH CAUSE OF ACTION THEREIN, DEFENDANTS ALLEGE AS
9 FOLLOWS:

10 Without admitting any of the allegations of the Complaint,
11 Defendants allege that Plaintiffs have failed to exercise
12 reasonable care for their protection against the type of damages
13 and incidents alleged to have occurred in this Complaint. If any
14 such damage has occurred, it was proximately and legally caused
15 in some portion, up to the whole thereof, by the Plaintiffs and
16 therefore any award against this answering Defendant, if any,
17 must be reduced in proportion to the comparative fault of the
18 Plaintiffs.
19

20 AS A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
21 COMPLAINT AND EACH CAUSE OF ACTION THEREIN, DEFENDANTS ALLEGE AS
22 FOLLOWS:

23 Without admitting any of the allegations of the Complaint,
24 Defendants are informed and believe, and thereupon allege, that
25 if Plaintiffs suffered any damage as a result of the allegations
26 set forth in this Complaint, Plaintiffs are not entitled to
27 recover from Defendants any damages due to Plaintiffs failure to
28

1 take reasonable efforts to mitigate the damages said Plaintiffs
2 allegedly incurred.

3 AS A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
4 COMPLAINT AND EACH CAUSE OF ACTION THEREIN, DEFENDANTS ALLEGE AS
5 FOLLOWS:

6 Without admitting any of the allegations of the Complaint,
7 Defendants are informed and believe, and thereon allege, that if
8 these answering Defendants are found to be liable, then
9 Defendants action or inaction was not the sole, legal or
10 proximate cause of the incidents upon which liability is based or
11 damages awarded, if any, and that accordingly, any damages
12 awarded must be apportioned according to the respective fault of
13 all parties, persons or entities, or their agents, servants and
14 employees, who contributed to or caused the alleged incidents or
15 damages, according to proof at the time of trial.

17 AS A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
18 COMPLAINT AND EACH CAUSE OF ACTION THEREIN, DEFENDANT ALLEGES AS
19 FOLLOWS:

20 Without admitting any of the allegations of the Complaint,
21 Defendants allege that Plaintiffs conduct relative to these
22 answering Defendants and the relationship between Plaintiffs and
23 these answering Defendants was such as to bring the Plaintiffs
24 into this lawsuit with unclean hands, and as such, Plaintiffs are
25 barred from pursuing the claims alleged.

27 AS A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
28 COMPLAINT AND EACH CAUSE OF ACTION THEREIN, DEFENDANTS ALLEGE AS

1 FOLLOWS:

2 Without admitting any of the allegations of the Complaint,
3 Defendant is informed and believes, and thereon alleges, that the
4 Complaint filed by Plaintiffs against this Defendant was brought
5 without reasonable care and without a good faith belief that
6 there was a justiciable controversy under the facts and law which
7 warranted the filing of the Complaint against this responding
8 Defendant, as the agreement provided for the purchase of 50% of
9 OK stores, which purchase was acquired but through the failure of
10 Plaintiffs to complete the capital payments, the stores were
11 lost, and Plaintiffs now try to claim other entities as the basis
12 of the transaction, and as such Plaintiffs should therefore be
13 responsible for all of Defendant's necessary and reasonable
14 defense costs, including attorney's fees.
15

16 AS A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
17 COMPLAINT AND EACH CAUSE OF ACTION THEREIN, DEFENDANT ALLEGES AS
18 FOLLOWS:

19 Without admitting any of the allegations of the Complaint,
20 Defendants are informed and believe, and thereon alleges that the
21 monies due as alleged in the complaint were in actuality funds
22 provided for capital contributions due and owing to the
23 identified corporate entities so that Plaintiffs could acquire an
24 interest in the Mexico business ventures after Plaintiffs
25 representatives, who are substantial sophisticated business
26 individuals, had fully performed their due diligence, and any
27 writings to the contrary were represented to Defendants by
28

1 Harvey Vechery to merely be to avoid any dispute between HARVEY
2 VECHERY and LINDA VECHERY, who were in actuality the true
3 investors with regard to such investment rather than to represent
4 any actual monies due and owing from Defendants.

5 AS AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
6 COMPLAINT AND EACH CAUSE OF ACTION THEREIN, DEFENDANT ALLEGES AS
7 FOLLOWS:

8 Without admitting any of the allegations of the Complaint,
9 Defendants allege that if any contracts, obligations, or
10 agreements as alleged in the Complaint have been entered into,
11 any duty or performance of Defendants is excused by reason of
12 Plaintiffs breach of their obligations and commitments which lead
13 to the loss of the enterprise under which the monies were paid,
14 and specifically, that the funds were provided as an investment
15 to acquire three OK Stores in Mexico, as well as continue
16 operation of the Go4Valu enterprise with Defendants and
17 Plaintiffs each having a 50% interest in the stores. Plaintiff
18 agreed by letter of intent to provide capital to obtain the
19 stores and provide necessary inventory. Plaintiffs provided
20 funds over an extended period of time greater than anticipated by
21 the parties and subsequently failed to provide the full capital
22 agreed, and that as a result thereof the failure to provide such
23 additional capital by the Plaintiffs caused the loss of the
24 stores.
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26

27 AS A NINTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
28 COMPLAINT AND EACH CAUSE OF ACTION THEREIN, DEFENDANT ALLEGES AS

1 FOLLOWS:

2 Without admitting any of the allegations of the Complaint,
3 Defendants allege that the monies provided were not loans to be
4 repaid, but rather an investment in the Mexico ventures, which
5 investments were made by Plaintiffs after full and careful due
6 diligence and inspection of records and facilities, and therefore
7 the monies are subject to discharge as investments provided after
8 full and open investigation.

9 AS A TENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE SECOND
10 AMENDED COMPLAINT AND EACH CAUSE OF ACTION THEREIN, DEFENDANT
11 ALLEGES AS FOLLOWS:
12

13 Without admitting any of the allegations of the Complaint,
14 Defendants are informed and believes and based thereon allege
15 that the amounts invested by Plaintiffs were invested after
16 careful and diligent investigation of the financial condition of
17 the business venture as well as inspection of the facilities of
18 the business enterprise, and not as a result of any fraud or
19 improper conduct by Defendants.

20 AS AN ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
21 SECOND AMENDED COMPLAINT AND EACH CAUSE OF ACTION THEREIN,
22 DEFENDANT ALLEGES AS FOLLOWS:
23

24 Without admitting any of the allegations of the Complaint,
25 Defendants are informed and believes and based thereon allege
26 that the amounts invested by Plaintiffs were invested after
27 careful and diligent investigation of the financial condition of
28 the business venture as well as inspection of the facilities of

1 the business enterprise, and not as a result of any conversion of
2 funds by Defendants of the monies invested into the business
3 venture.

4 AS A TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
5 SECOND AMENDED COMPLAINT AND EACH CAUSE OF ACTION THEREIN,
6 DEFENDANT ALLEGES AS FOLLOWS:

7 This answering Defendant presently has insufficient
8 knowledge or information upon which to form a belief as to
9 whether there may be additional, as yet unstated, affirmative
10 defenses. This answering Defendant therefore reserves the right
11 to assert additional affirmative defenses in the event discovery
12 indicates it would be appropriate.
13

14 WHEREFORE, this answering Defendant prays as follows:

15 1. That the claim of Plaintiffs are discharged pursuant to
16 the Bankruptcy Petition of the Defendants;

17 2. That these answering Defendants have judgment against
18 the Plaintiffs for costs of suit incurred herein;

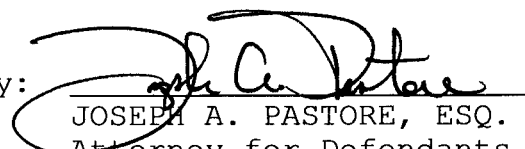
19 3. That these answering Defendants recover attorneys fees
20 incurred herein; and

21 4. For such other and further relief as this court may
22 deem just and proper.
23

24 DATED: April 29, 2009

SOREM & PASTORE, Lawyers

25 By:

26 
27 JOSEPH A. PASTORE, ESQ.
28 Attorney for Defendants